IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 29 OF 2006

IN

SECOND APPEAL NO. 25 OF 2006

MAHADEV NILU GAUDO AND ANR ....Applicants

Versus

SHRI ROHIDAS KUNCOLIENKAR, PONDA GOA. ....Respondent

Mr. R. G. Ramani, Advocate for the Applicants.

Mr. G. Shirodkar, Advocate for the Respondent.

Coram:- S.K. SHAH, J.

Date:- 17th January, 2007

P.C.:

Heard Counsel on both sides.

2. By this application the learned counsel for the Applicants seeks to review the Order passed by this Court on 27th November, 2006.

3. By Order dated 27th November, 2006 this Court while considering the application of the appellant-plaintiff, directed the matter to be remanded to the Ad hoc Addl. District Judge, Mapusa for adjudication of the appeal afresh on the basis of available evidence and to dispose of the appeal within three months from the date of receipt of the writ of this Court. This direction came to be passed after observing that the learned Addl. District Judge did not consider and appreciate the evidence at all.

4. The learned Counsel for the Applicants submits that it is apparent, on

the face of it that the provisions of Section 100 C.P.C. are not followed, wherein it was mandatory for the Court, while dealing with the appeal to frame substantial questions of law and then to decide the matter.

5. The learned Counsel for the respondent however submits that this Court has properly remanded the matter and given a direction to the lower Appellate Court and therefore when such a direction is given, it will not be open to the applicant to agitate this point in review as this cannot be said to be a mistake apparent on the face of the record.

6. The learned Counsel for the respondent also pointed that the same contention was raised before this Court when the impugned Order came to be passed and that was rejected. He submits that this Court also cannot consider this aspect in review petition as this Court is not sitting in appeal against the said Order which may be said to involve substantial questions of law.

7. As could be seen, the Order passed by this Court on 27th November, 2006 specifically mentions the submissions made on behalf of the learned Counsel for the Appellants that it is necessary to frame substantial questions of law and then consider the matter for remand. That has been rejected by this Court and passed the said Order. This being the position, it cannot be said that it is a mistake on the face of the Order itself. It could, at the most, be said to be an error of judgment, if at all it is so and therefore that can be considered only in appeal and not in review. The application, therefore, cannot be entertained.

The application is therefore rejected.

S.K. SHAH, J.

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